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No. 556

In the Supreme Court of the United States

October Term, 1957

SHEBA BRACELETS, INC., AND
ROBERT J. CARROLL, PETITIONERS

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (App. 190-202)[1] is reported at 144 F. Supp. 939. The opinion of the Court of Appeals (G. 33-55; Pet. App. 29-50) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 14, 1957 (G. 56). A petition for rehear-

[1] "App." refers to the blue printed appellants' appendix; "G." to the gray printed appellee's (government's) appendix and the papers immediately following it; and "R." to the typewritten transcript of testimony at the trial.

ing (G. 58-68) was denied on September 18, 1957 (G. 70). The petition for a writ of certiorari was filed on October 17, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court properly denied a motion by petitioner corporation to suppress certain records as to acquisition and delivery of gold, which records petitioner was required to keep in accordance with applicable Treasury Department regulations.

2. Whether the trial court's refusal to require the prosecution to furnish petitioners with certain written Secret Service reports was, in the circumstances of this case, reversible error.

STATUTES, REGULATIONS AND RULES INVOLVED

These are set forth in the Appendix, *infra*, pp. 16-21.

STATEMENT

Petitioners Sheba Bracelets, Inc. ("Sheba") and Robert J. Carroll, Sheba's treasurer, were charged in count 2 of an indictment returned on August 25, 1952, in the United States District Court for the Southern District of New York, with making a wilful false statement in violation of 18 U.S.C. 1001 (*infra*, p. 16) in an "End-Use Certificate for Semi-processed Gold" on September 14, 1951, to the effect that Sheba was regularly engaged in the manufacture of jewelry (App. 8). A similar offense on September 28, 1951, was charged in count 10 (App.

13-14). Count 3 charged a wilful false statement in violation of 18 U.S.C. 1001 on September 14, 1951, to the effect that the gold specified in the End-Use Certificate would be used by Sheba in the manufacture of jewelry (App. 9), and count 11 charged a similar offense on September 28, 1951 (App. 14).[2] The jury found both petitioners guilty on these four counts. Sheba was fined $5,000 on the four counts. Carroll was sentenced to 18 months' concurrent confinement on each count, and fined $5,000 (App. 4). On appeal (App. 4), the judgment was unanimously affirmed (G. 56).

The pertinent evidence adduced at the trial may be summarized as follows:

On March 18, 1949, Sheba was issued a gold license (Gov. Ex. 2) from the Treasury Department for the manufacture of jewelry (R. 64). Thereafter, temporary licenses (Gov. Ex. 3-8) were issued from month to month during the period from April through September 1951 (R. 66-67). During this time, Sheba made regular purchases of fine gold from licensed refiners, Kastenhuber and Lehrfeld (R. 150), and for each purchase submitted an "End-Use Certificate" representing that the gold was required for use in the manufacture of jewelry (G. 14; Gov. Ex. 14, 15, 16). The total purchases were for 15,000 ounces of gold, valued at $534,000 (Gov. Ex. 13).

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[2] Count 1 (App. 6-8), charging petitioners and others with conspiracy to violate 12 U.S.C. 95a (*infra*, pp. 16-17), was dismissed at the conclusion of the government's case (App. 3).

In purchasing the gold, Carroll (Sheba's officer) would meet one Louis Fisher at a bank, obtain cash from him, and then get a certified check from the bank (G. 3-4). Carroll would then purchase from Kastenhuber and Lehrfeld about 150 ounces of gold, paying for it by certified check. The gold bars were wrapped in brown paper and turned over to Carroll (G. 8-11, 12, 13).

On July 25, 1951, Secret Service agent Newbrand went to inspect Sheba's plant at 2747 Coney Island Avenue in Brooklyn, and discovered that the jewelry equipment was "not set up for use" and was covered with a "great deal of dust" (G. 22-25). Carroll explained this by stating that a Mr. Popper and his wife did all the jewelry casting, but were away on vacation (G. 26).[3] At this time, Treasury agents requested and received from Carroll certain of Sheba's books and records which were returned to Carroll on August 3, 1951 (App. 174-175). Included among these was the cash receipts book (Gov. Ex. 18; R. 336) (App. 177).

On September 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 25, 26, 27, and 28, agent Newbrand followed Carroll in New York. On each occasion, in leaving Kastenhuber and Lehrfeld's office, Carroll would carry a package wrapped in brown paper and

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[3] John Sciabica, employed by the Carroll Instrument Company at Sheba's address, stated that he never did meet a Mr. Popper there, and that Mrs. Popper worked there only a few weeks and did not engage in manufacturing jewelry (G. 19-20).

go to the office of Mr. and Mrs. S. Diamant.[4] Carroll would remain about five or ten minutes, and then come out without the package (G. 26-28).

On the last of these occasions, September 28, 1951, agent Newbrand arrested Carroll without a warrant as he left Diamant's office. When asked what he had done with the gold, Carroll replied, "I can't tell you. It involves too many people" (G. 28-29). Some personal business cards were taken from Carroll at the time of his arrest (App. 170; R. 660). About 25 minutes after Carroll's arrest, the agents, with a search warrant, searched Diamant's office, but did not find any gold (G. 29-30). On the same day, agents Newbrand and Braun went to Sheba's premises without a search warrant and obtained permission of an employee (Adler) to look around. The agents took 3 sales invoice tablets, several Post Office Department return receipt cards, several cancelled checks, and a list of Brazilian companies (App. 172, 175). None of these documents was used at the trial or in preparation for trial (App. 167).

John Sciabica was employed by Carroll for the Carroll Instrument Company which occupied the same premises as Sheba (G. 17, 21). His working hours were from 9:00 a.m. to 5:30 p.m., and he was employed there from July 2, 1951, to March 1952 (G. 17, 19). He testified that Carroll spent only a short time in the office each day (G. 19). He further testified that, during all the time he worked there,

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[4] Louis Fisher, from whom Carroll got the cash at the bank before gold purchases, is Mrs. Diamant's cousin (App. 94).

he never did see Carroll or anyone else manufacturing jewelry, and that the jewelry equipment was "dirty, just hanging around, just knocking around, as though it hadn't been in use" (G. 19, 20-21).

Sheba's records purported to show that it manufactured and sold gold bracelets in wholesale quantities. Sheba's invoices and cash receipts book for the period from March 1951 to September 27, 1951, indicated that it produced 9,400 bracelets all of which were sold to "Frank Brooks, 712 Poplar Street, Philadelphia" for $635,725 (Gov. Ex. 17, 18; G. 30).

Government witness Magarill testified that he had lived at 712 Poplar Street, Philadelphia, for 26 years and conducted a roofing and sheet metal business there. He had never known a Frank Brooks nor heard of anyone by that name in his neighborhood (G. 31-32). For the defense, an officer of a Philadelphia bank testified that a Frank Brooks at 712 Poplar Street had "a very peculiar account" there from September 22, 1949, until June 29, 1950 (App. 100-104).[5]

While the government was conducting an income tax investigation of Sheba, Carroll voluntarily gave some of Sheba's books and records to the Internal Revenue agents on April 27, 1954 (App. 178). On May 12, 1955, and June 27, 1955, Carroll voluntarily submitted certain bank statements and check stubs of Sheba (App. 179, 185). On May 31, 1956, in compliance with a request of the United States At-

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[5] The bank officer's testimony is summarized in footnote 15 of the opinion below (Pet. 19).

torney, Sheba's corporate records were turned over to him by the Treasury agents (App. 167). Included among these was the cash receipt book (Gov. Ex. 18; R. 336) which disclosed the jewelry sales to Frank Brooks.

The trial started on September 11, 1956 (R. 1). Petitioners filed a motion to suppress evidence after the government's case in chief had been concluded, and some defense evidence had been introduced (R. 661, 665-667). As to papers taken from Carroll at the time of his arrest, the court found that they formed no part of the prosecution's case (App. 196). As to the items taken from Sheba's premises on September 28, 1951 (*supra*, p. 5), the court denied this part of the motion as untimely (App. 200). As to the corporate books and records which Carroll had voluntarily turned over to the Internal Revenue agents in 1954 and 1955 (*supra*, pp. 6-7), the court apparently denied this part of the motion on its merits, being of the opinion that the jurisdiction of the Treasury agents was clear and that the government was proceeding by "legislative authority, not individual consent" (App. 199, 200).

ARGUMENT

1. There is no merit to petitioner's contention (Pet. 12-14) that the District Court erred in refusing to suppress Sheba's corporate records which the United States Attorney received on May 31, 1956, from the Internal Revenue agents, to whom Carroll had voluntarily delivered them for an income tax investigation in 1954 and 1955.

The opinion of the Court of Appeals rests on the ground that the District Court properly exercised its discretion in denying the part of the motion to suppress records received from the Internal Revenue agents, since the motion was untimely and the court was not required to consider it in the middle of the trial (Pet. App. 43). This may well be so, but it is not clear that the District Court's decision as to untimeliness related to more than that aspect of the suppression motion which related to the September 28, 1951, seizure of Sheba documents (App. 200), none of which was used at the trial or in preparation of the government's case (App. 167). The District Court did discuss the merits of the government's use of the corporate records (App. 197-200), and the holding that Sheba's records obtained from the Internal Revenue agents should not be suppressed can be independently sustained on those merits.[6]

As a holder of a license to manufacture gold jewelry, Sheba's business was the subject of public concern, and inspection of its records by the Treasury Department was a legitimate exercise of regulatory power. Cf. *Shapiro* v. *United States*, 335 U.S. 1, 32-35; *Davis* v. *United States*, 328 U.S. 582, 589-590. Under 31 C.F.R. (1949 Ed.) 54.26 (*infra*, pp. 18-19), by taking out a gold license Sheba consented that its records

[6] On this view, it is unnecessary to consider petitioners' arguments that Rule 41(e), F.R. CRIM. P. (*infra*, p. 21), did not apply since the books were not obtained by search and seizure, and that in any event the reason for Rule 41(e) had been removed by the court's one week adjournment of the trial (Pet. 12-18).

should be available for examination by representatives of the Treasury Department. When Sheba agreed to permit such inspection, it voluntarily waived such claim to privacy as it otherwise might have had regarding its gold acquisitions and deliveries. Cf. *Zap* v. *United States*, 328 U.S. 624, 628. Inspection of Sheba's records was permissible since the government was proceeding by legislative authority; and this was true regardless of any individual consent by petitioner Carroll. Accordingly, as the District Court ruled, the government clearly had the right to inspect the books and to use the information obtained as the result of inspection, irrespective of the tax investigation.

Since the records were corporate records not subject to the privilege against self incrimination, they could have been subpoenaed by the United States Attorney from petitioner corporation for use at the trial. Cf. *Zap* v. *United States*, 328 U.S. 624, 629. Had they been in the hands of some third party other than the government to whom the corporation had turned them over, they could similarly have been subpoenaed. Hence, the United States Attorney was clearly entitled to obtain these records in the hands of the Internal Revenue Service.[7] The government was thus using records and information which it

[7] 26 U.S.C. 7213 and 18 U.S.C. 1905 (*infra*, pp. 17-18), upon which petitioners rely (Pet. 13-14), apply criminal sanctions to government employees making unauthorized disclosure of income tax information, but do not by their terms render Sheba's books inadmissible. Here, as we point out in the text, there was no disclosure of information not authorized by law.

could have obtained, regardless of the tax investigation.

At most, petitioners' argument as to these records amounts to the contention that they should have been returned to the corporation and then subpoenaed, rather than passed directly from one branch of the government to another. But the procedure actually followed involved no invasion of petitioners' rights. If it is contended that a subpoena would have given petitioners notice and an opportunity to object, the fact is that petitioners had that opportunity. Although Carroll and his attorney, on two or three occasions before trial, were given the opportunity to inspect Sheba's records in the government's possession (App. 167; R. 656), they did not move to suppress the records until the trial was almost completed.[8]

Moreover, the inspection of, and use in evidence, of Sheba's books was significant only in the respect that it disclosed sales to Frank Brooks, a fictitious person. The government had this information in 1951 long before the return of the indictment and the delivery of Sheba's books to the United States Attorney in 1956 (see *infra*, pp. 11-12).

2. Petitioners also contend that they were denied the right to inspect and use certain Secret Service reports at the trial, contrary, they assert, to the holding in *Jencks* v. *United States*, 353 U.S. 657 (Pet. 26-28).

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[8] Carroll told the court at his sentencing that it was unfair of the government to say that he had been uncooperative, since he had tried to make his records available and cooperate in every way (R. 1060).

(a). Petitioners took the position that the government had obtained a lead as to bracelet sales to Frank Brooks (who, the prosecution discovered and argued, was fictitious) as a result of the allegedly illegal delivery of Sheba's books by the Internal Revenue Service to the United States Attorney in 1956. But in a colloquy with the court, government attorney Ruskin stated "* * * we got the names of Frank Brooks and the other customers of Sheba Bracelets prior to July, 1950—prior to July, 1951, from the examination of the books which was made in July, 1951, when Mr. Carroll turned the books over to the Secret Service and the Audit Division for their examination" (R. 688-689). The judge asked Mr. Ruskin to submit his own or another qualified person's affidavit as to this, and stated that he would mark such affidavit Court's Exhibit 8A. Mr. Ruskin stated that he would do as the judge requested (R. 689-690).

Although Mr. Ruskin apparently did not file an affidavit to be marked Court's Exhibit 8A, he did leave with the court copies of the Secret Service reports regarding the investigation of Frank Brooks as far back as July and August 1951 (R. 880-883). This colloquy occurred, regarding these reports, between the court and the defense counsel (R. 888-889):

> Mr. Palmer: Will they be marked as a Court exhibit?
>
> The Court: I will put them in a sealed envelope and they will be marked as a Court exhibit in a sealed envelope.

Mr. Palmer: Very good.

The Court: And will not be subject to your scrutiny, but they will be available for the scrutiny of the appellate court, if the appellate court is so advised.

Mr. Palmer: All right.

When the reports were so filed as a court exhibit, the court stated (R. 902-903):

> I wish to state that my examination of the Secret Service reports indicates that Frank Brooks was the subject of investigation by the Secret Service before the indictment in the present case was returned, and that the Secret Service had good cause to believe him to be a fictitious person; that many of the activities of the defendant in this case were of such a nature as to warrant the belief that the defendant was violating the very laws with which he is charged * * * by the device of using Brooks as an alleged customer.[9]

This is not a type of situation covered by the *Jencks* case. The reports were not sought for the purpose of assistance in cross-examination of a government witness for impeachment purposes. And, in the colloquy just quoted, defense counsel did not de-

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[9] From this, it appears that Mr. Ruskin was not guilty of bad faith (as petitioners contend, Pet. 22-25) in failing to produce information requested as to when the government first learned that Frank Brooks was a Sheba customer. Even though a particular affidavit marked Court's Exhibit 8A was not forthcoming, Mr. Ruskin did prove to the court's satisfaction, by means of the Secret Service reports, that the government knew of Brooks several years before Sheba's books were turned over by the Treasury agents to Mr. Ruskin.

mand inspection of the reports but expressed complete satisfaction with the *in camera* judicial inspection announced by the court as its contemplated procedure.

(b). During cross-examination of agent Newbrand, he stated that his notes would probably disclose whether there was a foot press in Sheba's premises on September 28, 1951, and the court, at defense counsel's request, directed that these notes be produced (R. 326-328). These handwritten notes were marked Court's Exhibit 4, turned over to the defense attorney (R. 372, 380-381), and later introduced in evidence (R. 388). Defense counsel also asked for production of all the typewritten formal reports of Newbrand's surveillance of Carroll on the days prior to September 28, 1951 (R. 383-386). These formal reports were marked Court's Exhibit 6 for identification. Among them was one of September 28, 1951, verbatim the same as the handwritten notes for that date which had been furnished to defense counsel. From this September 28 report, the court gave to defense counsel page 2, listing equipment found at Sheba's premises on that date, but refused to furnish counsel with the other reports as to surveillance of Carroll. In its ruling, the court expressly adhered to the government argument that "examination [of these reports] by defense counsel cannot assist them in their cross-examination of Agent Newbrand" (R. 469-470, 474).

The court below, noting that the government conceded that under *Jencks* these reports should have been turned over to the defense, held that the failure

of the trial court to do so was, under the particular circumstances, harmless error (Pet. App. 48-50). In view of the convincing evidence of guilt—the non-use of Sheba's jewelry machinery, Carroll's regularly repeated illegal purchases and disposition of gold, and the false entries in Sheba's books showing large-scale sales of bracelets to the fictitious Frank Brooks—it is submitted that this holding was correct. Cf. *Lutwak* v. *United States*, 344 U.S. 604, 619.

Jencks does not hold that the harmless error rule can never apply to a situation where government reports are not made available to the defense despite proper request for their use. Non-production of the F.B.I. reports in *Jencks* was found to be error since it resulted in unduly circumscribing the effectiveness and extent of the cross-examination of key government witnesses. Here, unlike *Jencks*, the trial judge who denied the motion did examine the reports. His considered opinion that they could not assist in the cross-examination of Newbrand is entitled to great weight on the issue of harmless error. The judge was careful to preserve the interest of the petitioners under the law as he then understood it to be, requiring the production of the reports when their existence was disclosed, turning over those that had any possible bearing on the testimony, and examining the others. The Court of Appeals, which had the reports before it, was of the opinion that use of the suppressed reports would have accomplished nothing "other than a demonstration that Newbrand had written in his reports the same thing to which he testified at the trial" (Pet. App. 47). In these cir-

cumstances, application of the harmless error doctrine by the court below was a proper disposition of the problem.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1957.

APPENDIX

18 U.S.C. (1952 Ed.) 1001 provides:

Statements or Entries Generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

12 U.S.C. (1952 Ed.) 95a provides:

Embargo on bullion or coin; hoarding; requirement of disclosure; penalties.

(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and * * *

Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by

a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation.

26 U.S.C. (1952 Ed., Supp. IV) 7213 provides:

Unauthorized disclosure of information.

(a) Income Returns.—

(1) Federal employees and other persons.—It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

18 U.S.C. (1952 Ed.) 1905 provides:

Disclosure of confidential information generally.

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record

made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

31 C.F.R. (1949 Ed.) 54.25 provides:

Licenses. (a) Upon receipt of the application and after making such investigation of the case as it may deem advisable, the mint, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, shall issue to the applicant a license on form TGL-12, TGL-13, or TGL-14, whichever is designated in rulings of the Secretary of the Treasury for the kind of business, industry, profession, or art in which the applicant is engaged.

* * * *

31 C.F.R. (1949 Ed.) 54.26 provides:

Records. Every person holding a license issued pursuant to § 54.23 shall keep exact records of all his acquisitions and deliveries of gold. His records shall contain the name, address, and license number of each person from whom he acquires, or to whom he delivers, gold (other than fabricated gold) and shall show the amount, date, and description of each such acquisition and delivery, and such records shall be available for examination by a representative of the Treasury Department for at least 1 year after

the date of the disposition of such gold. If the person from whom such gold is acquired, or to whom such gold is delivered, does not have a license such records shall show, in lieu of the license number of such person, the section of the regulations in this part pursuant to which such gold was held or acquired by such person.

31 C.F.R. (1949 Ed., 1956 Supp.) 54.26 provides:

Investigations; records; subpoenas. (a) The Director of the Mint is authorized to make or cause to be made such studies and investigations, to conduct such hearings, and to obtain such information as the Director deems necessary or proper to assist in the consideration of any applications for licenses, or in the administration and enforcement of the acts, the orders, and the regulations in this part.

(b) Every person holding a license issued under § 54.25 (a), or acquiring, holding or disposing of gold pursuant to the authorizations in § § 54.18 and 54.21, shall keep full and accurate records of all his operations and transactions with respect to gold, and such records shall be available for examination by a representative of the Treasury Department until the end of the fifth calendar year (or if such person's accounts are kept on a fiscal year basis, until the end of the fifth fiscal year) following such operations or transactions. The records required to be kept by this section shall include the name, address, and Treasury gold license number of each person from whom gold is acquired or to whom gold is delivered, and the amount, date, description and purchase or sales price of each such acquisition and delivery, and any other records or papers required to be kept by the terms of a Treasury Department gold license. If the person from whom gold is acquired, or to whom gold is delivered, does not have a Treasury gold license such records shall show, in lieu of the

license number of such person, the section of the regulations in this part pursuant to which such gold was held or acquired by such person. Such records shall also show all costs and expenses entering into the computation of the total domestic value of articles of fabricated or semi-processed gold as defined in § 54.4.

CODIFICATION: In paragraph (b) the first sentence was amended to read as set forth above, 20 F. R. 7330, Oct. 1, 1955; 20 F.R. 7795, Oct. 15, 1955.

(c) The Director of the Mint (or the officers and employees of the Bureau of the Mint specifically designated by the Director) or any department or agency charged with the enforcement of the acts, the orders, or the regulations in this part, may require any person to permit the inspection and copying of records and other documents and the inspection of inventories of gold and to furnish, under oath or affirmation or otherwise, complete information relative to any transaction referred to in the acts, the orders, or the regulations in this part involving gold or articles manufactured from gold. The records which may be required to be furnished shall include any records required to be kept by this section and, to the extent that the production of such information is necessary and appropriate to the enforcement of the provisions of the acts, the orders, and the regulations in this part, or licenses issued thereunder, any other records, documents, reports, books, accounts, invoices, sales lists, sales slips, orders, vouchers, contracts, receipts, bills of lading, correspondence, memoranda, papers and drafts, and copies thereof, either before or after the completion of the transaction to which such records refer.

(d) The Director of the Mint may administer oaths and affirmations and may, whenever necessary, require any person holding a license under § 54.25 or acquiring, holding or disposing of gold

pursuant to the authorizations of §§ 54.18 or 54.21, or any officer, director, or employee of such person, to appear and testify or to appear and produce any of the records specified in paragraph (c) of this section or both, at any designated place.

The Federal Rules of Criminal Procedure provide:

Rule 41 (e): *Motion for Return of Property and To Suppress Evidence.*

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for the use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

Rule 52:

(a) *Harmless Error.* Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

* * * *

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